IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

ORDER

SHANKARLAL VS. STATE & ORS.

S.B. CRIMINAL REVISION PETITION NO.246/1989 UNDER SECTION 397/401 CR.P.C AGAINST THE ORDER DATED 01.08.89 PASSED BY SESSIONS JUDGE, BHILWARA.

DATE OF ORDER : 18.05.2006.

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr.Suresh Kumbhat for the petitioner.
Mr.JPS Chaudhary Public Prosecutor for the State.
Mr.S.G. Ojha for non-petitioner Nos. 2 and 3.

BY THE COURT:

This criminal revision petition under Section 397/401 Cr.PC is directed against the order dated 01.8.89 passed by Sessions Judge, Bhilwara (for short "the revisional court" hereinafter) in criminal revision No.48/97, whereby the revisional court allowed the revision petition and set aside the order dated 08.10.95 passed by Judicial Magistrate No.1, Bhilwara (for short "the trial court" hereinafter) taking cognizance of offences under Sections

420 and 406 IPC against the non-petitioner Nos. 2 and 3. Aggrieved by the order impugned, the petitioner complainant has filed the instant revision petition.

I have heard the learned counsel for the parties. Perused the order impugned as also the record of the trial court. I have also gone through the order dated 08.10.2005 passed by the trial court whereby the trial court took the cognizance of the offences against the non-petitioner Nos. 2 and 3.

It is contended by learned counsel for the complainant-petitioner that a case was instituted on a complaint filed by the petitioner-complainant, the trial court took cognizance of offences noticed above against the non-petitioner Nos. 2 and 3 and issued a process vide order dated 08.10.85. That order came to be challenged by the non-petitioner No. 2 before the revisional court in which the petitioner-complainant was party-non-petitioner. The matter was posted for hearing of the revision before the revisional court on 15.5.89 and thereafter the next date for final arguments on the revision was fixed to 31.8.89.

Without any intimation to the petitioner-complainant or his counsel, the revisional court pre-poned the date to 01.8.89 and in absence of the petitioner-complainant or his counsel, allowed the revision in favour of non-petitioner No.2. An affidavit of Chander Singh Bolia, Advocate representing the complainant-petitioner before the revisional court has been filed stating therein that he was engaged as a counsel by the petitioner-complainant in the revision petition filed by the non-petitioner No.2. The matter was fixed on 15.5.89 and the revisional court adjourned the matter to 31.8.89 for final arguments on the revision. Without any intimation to him, the revisional court pre-poned the matter and decided in his absence on 01.8.89 by allowing the revision petition filed by the non-petitioner No.2. This affidavit has not been controverted by the non-petitioner No.2.

Thus, from the record it appears that the revisional court without assigning any reason, pre-poned the date for hearing of the revision petition and in absence of counsel for the petitioner-complainant, allowed the revision petition in favour of the non-petitioner No.2 and against the petitioner, though the presence of counsel for

the petitioner has been shown in the order impugned, which otherwise appears to be erroneous. Since it has been stated on affidavit that neither the petitioner-complainant himself nor his counsel was informed about pre-poning the date, and nor they were present in court when the matter was taken up for hearing and decided.

In view of uncontroverted facts stated in affidavit, in my view, the revisional court fell in error in deciding the revision petition against the petitioner without affording him an opportunity of hearing by pre-poning the matter and, therefore, the revision needs to be remanded to the revisional court to decide it afresh after hearing both the parties.

Consequently, the revision petition is allowed. The order impugned dated 01.8.89 passed by Sessions Judge, Bhilwara in criminal revision petition No.48/87 is hereby set aside and the matter is remanded to the Sessions Judge, Bhilwara to decide the revision petition filed by the non-petitioner No.2 afresh after affording an opportunity of hearing to all the parties. The counsel for

the parties agree that the parties would appear before the revisional court on 07.8.2006, therefore, no fresh notice by the revisional court for hearing of the revision petition is required. The record of the trial court be returned to the revisional court forthwith.

(H.R. PANWAR)J.

Anil/